



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Order 96-10-3
Served 10/8/96

Issued by the Department of Transportation
on the 2nd day of October, 1996

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Agreement Adopted by the Tariff :
Coordinating Conferences of the :
International Air Transport Association : Docket OST-96-1444
relating to TC31 Fares :
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ORDER

Various members of the International Air Transport Association (IATA) have filed agreements with the Department under section 41309 of Title 49 of the United States Code (Code) and Part 303 of the Department's regulations. The agreement was adopted at the TC31 Passenger Tariff Coordinating Conference held in Montreal May 6-8, 1996, for effectiveness October 1, 1996. 1/

The agreement is comprised of resolutions between Area 3, South West Pacific, and two sub-areas in Area 1, North America/Caribbean and South America. The agreement makes structural changes, amends conditions of travel, and generally increases the level of fares. **Structural Changes:** Structural changes include the introduction of new, unrestricted normal fares to/from North America/Caribbean (except from Australia) to replace the current two-tiered restricted/unrestricted normal fare levels, which were cancelled; the introduction of new excursion fares from the Cook Islands and Rarotonga to Honolulu; the addition of a new routing provision to permit TC3-South America fares to use the shortest operated mile-ages constructed over Los Angeles; and the despecification of fares to/from Belem and Manaus, Brazil.

Conditions of Travel: Changes to conditions of travel include the extension of minimum stay provisions for selected excursion fares between French Polynesia and New Caledonia and North America/Caribbean to six months; a contraction of the peak season from Australia to reflect the reinstatement of the seasonality in effect prior to the 1996 Olympics; the alignment of the seasonality from the Cook Islands with that applicable from New Zealand; the addition of a rebooking provision to an APEX fare between French Polynesia and North America/Caribbean, permitting changes no later than seven days before departure; and the removal of the limitation on the number of interline transfers on excursion fares to/from South America.

1/ IATA memorandum TC31 Reso/ P 1119, filed with the Department June 10, 1996.

Fare Levels: The restructured normal fares to/from North America/Caribbean were generally increased five percent, with excursion fares generally increased by \$50. Round trip normal fares from

Australia were set at ninety percent of the doubled one-way fares. Fares to/from Mexico City were re-established at fixed premiums over the increased Los Angeles levels. Normal fares to/from South America were unchanged, with excursion fares generally reduced ten to fifteen percent.

We will approve the agreement. Based on our review of the information submitted and other relevant material, we conclude that the agreement will not result in fares that are unlawful or injurious to competition in the markets at issue. Our approval of the proposed premium and promotional fares is consistent with Department policy as stated in Order 85-3-8, March 4, 1985. We allow carriers wide latitude in pricing these types of fares, which are generally sensitive to market demand and other competitive pressures that obviate the need for regulatory intervention in most circumstances. Several resolutions containing changes to normal fares and conditions for U.S. points have been submitted to us for approval where there is no direct service in any of the affected U.S. markets. For these markets we will not impose our standard conditions holding the proposed normal economy fares to our regulatory ceilings based on the Standard Foreign Fare Level (SFFL). 2/

We do, however, continue our regulatory supervision over direct-service normal economy fares. 3/ The agreement proposes to increase economy fares that are above the Department's regulatory ceilings as established by the SFFL plus upward fare flexibility. 4/ The carriers have not furnished any economic justification in support of these proposed fare levels. Under these circumstances, we will condition our approval of the agreement to require that direct-service normal economy fares shall be no higher than the Department's applicable regulatory ceilings, and that each carrier, when filing tariffs implementing the agreement, provide a comparison of its proposed direct-service normal economy fares against the Department's SFFL ceiling levels.

Acting under Title 49 of the United States Code, and particularly

2/ See, for example, Orders 89-4-42, April 18, 1989, and 88-4-5 , April 1, 1988.

3/ We generally exercise regulatory control over point-to-point economy fares, generally defined as "unbundled" or "restricted " fares, and, in markets where they are unavailable, the unrestricted economy fares. -

4/ For example, the agreement would increase the Los Angeles - Papeete economy fare to \$1,286 one-way, whereas the current regulatory ceiling is \$992. t

sections 40101, 40103, 41300, and 41309:

1. We do not find that the resolutions set forth in Attachment A to this order, and which have direct application in foreign air transportation as defined by the Code, are adverse to the public interest or in violation of the Code, provided that (a) normal economy fares for U.S.-TC3 direct-service markets filed by each IATA carrier in tariffs filed with the Department pursuant to these resolutions shall not exceed the regulatory ceilings at the time of filing, and (b) each IATA carrier submits, at the time of filing and for comparative purposes, its SFFL base fares, proposed direct-service normal economy fares, and the percentages by which its proposed direct-service normal economy fares differ from the SFFL base levels for each market for which it files revised direct-service normal economy fares;

2. We do not find that the resolutions set forth in Attachment B to this order, and which have indirect application in foreign air transportation as defined by the Code, are adverse to the public interest or in violation of the Code; and

3. This agreement is a product of the IATA tariff conference machinery, which the Department found to be anticompetitive but nevertheless accepted on foreign policy and comity grounds by Order 85-5-32, May 6, 1985. The Department found that important transportation needs were not obtainable by reasonably available alternative means having materially less anticompetitive effects. Antitrust immunity was automatically conferred upon these conferences because, where an anticompetitive agreement is approved in order to attain other objectives, such conferral is mandatory under 49 U.S.C. 41308.

Order 85-5-32 contemplates that the products of fare and rate conferences will be subject to individual scrutiny and will be approved, provided they are of a kind specifically sanctioned by Order 85-5-32 and are not adverse to the public interest or in violation of the Code. As with the underlying IATA conference machinery, upon approval of a conference agreement, immunity for that agreement must be conferred under the Code. Consequently, we will grant antitrust immunity to the agreement in Docket OST-96-1444, as separately set forth in finding paragraphs 1 and 2 above, subject to the conditions imposed therein.

ACCORDINGLY,

We approve and grant antitrust immunity to the agreement contained in **Docket OST-96-1444**, as set forth in finding paragraphs 1 and 2 above, subject to the conditions imposed therein.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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on the World Wide Web at
<http://www.dot.gov/dotinfo/general/orders/aviation.html>

Attachment A
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Resolutions With Direct Application In
Foreign Air Transportation, Docket OST-96-1444
TC31 South West Pacific- North America, Caribbean

<u>Reso.</u>	<u>Description</u>	<u>No.</u>
002	Standard Revalidating/Amending Resolution (New)	R-1
070vv	Excursion Fares From Cook Islands, New Zealand To North America, Caribbean (Amending)	R-2
015s	Add-On Amounts (In USA/US Territories) (Amending)	R-4
046d	Intermediate Class Fares (Revalidating and Amending)	R-6
056d	First Class Fares (Revalidating and Amending)	R-7
066d	Economy Class Fares (Revalidating and Amending)	R-8
070nn	Excursion Fares Between French Polynesia, New Caledonia And North America, Caribbean (Revalidating and Amending)	R-9
071w	Excursion Fares From North America, Caribbean To South West Pacific (Revalidating and Amending)	R-11
071xx	Excursion Fares From Australia, Fiji To North America, Caribbean (Revalidating and Amending)	R-12
073k	Advance Purchase Excursion Fares From North America, Caribbean To South West Pacific (Revalidating and Amending)	R-13
073mm	One Way Advance Purchase Excursion Fares From South West Pacific To North America, Caribbean (Revalidating and Amending)	R-14

073pp	Advance Purchase Excursion Fares Between French Polynesia, New Caledonia And North America, Caribbean (Revalidating and Amending)	R-15
073q	Super Advance Purchase Excursion Fares From Cook Islands, New Zealand To North America, Caribbean (Revalidating and Amending)	R-16
073ww	One Way Advance Purchase Excursion Fares From North America, Caribbean To South West Pacific (Revalidating and Amending)	R-17

Attachment A
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Resolutions With Direct Application In
Foreign Air Transportation, Docket OST-96-1444
TC31 South West Pacific- North America, Caribbean

<u>Reso.</u>	<u>Description</u>	<u>No.</u>
073xx	Super Advance Purchase Excursion Fares From North America, Caribbean To South West Pacific (Revalidating and Amending)	R-18
075c	Advance Purchase Excursion Fares From Australia To North America, Caribbean (Revalidating and Amending)	R-20
075yy	Super Advance Purchase Excursion Fares From Australia To North America, Caribbean (Revalidating and Amending)	R-21
153k	Air-Sea Fares Between French Polynesia And USA (Revalidating and Amending)	R-24

Resolutions With Indirect Application In
Foreign Air Transportation, Docket OST-96-1444
TC31 South West Pacific- North America, Caribbean

<u>Reso.</u>	<u>Description</u>	<u>No.</u>
011	Mileages And Routes For Tariff Purposes (Amending)	R-3
015v	Add-On Amounts (Except in USA)(Amending)	R-5
070yy	Excursion Fares Between South West Pacific And South America (Revalidating and Amending)	R-10
074m	Special Excursion (PEX) Fares From South America To Australia, New Zealand (Revalidating and Amending)	R-19
078mm	Special Excursion (PEX) Fares From Australia, New Zealand To South America (Revalidating and Amending)	R-22
090g	Emigrant Fares From South America To South West Pacific (Revalidating and Amending)	R-23